54TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 2471.

CONTEMPTS OF COURT.

JANUARY 8, 1897.—Referred to the House Calendar and ordered to be printed.

Mr. RAY, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany S. 2984.]

The Committee on the Judiciary, having carefully considered Senate bill 2984, report as follows:

The right and power of courts to punish for contempts is inherent and absolutely essential to the existence of the court as such.—(Rapalje on Contempts, etc.) Its exercise is more frequent in chancery practice, it being, in many cases, the only way in which a court of equity can enforce its orders and decrees.

This power is not lightly to be interfered with or curtailed, and very little legislation has been attempted or deemed necessary on the subject.

Section 725 of the Revised Statutes of the United States provides as follows:

> The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts.

In fact this is but declaratory of the common law, and is restrictive if anything. Section 1070 (Rev. Stat. U. S.) expressly confers this power on the Court of Claims.

The power is recognized in consular courts (sec. 4104, Rev. Stat. U. S.) It was given to courts in bankruptcy (sec. 4975, Rev. Stat. U. S.), to the judges at chambers in such proceedings. (Rev. Stat. U. S., sec. 4973.)

Indeed it has been held that—

> In the absence of a constitutional provision on the subject legislative bodies have not power to limit or even regulate the inherent power of courts to punish for contempts. This power being necessary to the very existence of a court, as such, the legislature has no right to take it away or hamper its free exercise. (Rapalje on Contempts, p. 13, and cases there cited.)

This has no application to the circuit and district courts of the United States, they being creatures of Congress. (Ex parte Robinson, 19 Wall., U. S. 505, 510.)

It is a well-settled rule that that court alone in which a contempt is committed, or whose order or authority is defied, has power to punish it or to entertain proceedings to that end. (Rapalje on Contempts, p. 15.)

The tendency of legislation in this country, however, has been to narrow the definition of the offense, diminish the class of persons to whom it can be imputed, and restrict the power of the courts over it,

especially by limiting their power to fine and imprison. (Rapalje on Contempts, p. 14, and cases there cited.)

The Senate bill (S. 2984, passed the Senate June 10, 1896) divides contempts into two classes, "direct contempts" and "indirect contempts." "Contempts committed during the sitting of the court, or of a judge at chambers, in its or his presence, or so near thereto as to obstruct the administration of justice," are classified as "direct contempts" and may be summarily dealt with and punished by the court or judge at chambers, while "all other" contempts are classified as "indirect contempts," and a jury trial is given if demanded by the alleged offender.

Your committee are of the opinion that a failure of a witness duly served, or of a juror duly summoned, to obey the mandate of the court so nearly and immediately affects and obstructs the due administration of justice that such offenses ought to be classed with direct contempts and summarily dealt with by the court or judge having jurisdiction. If a reasonably good excuse is offered no punishment will follow, but if the failure is inexcusable a jury trial would cause delay, expense, and seriously impede the administration of justice. Contumacious witnesses and jurors should not be permitted to delay the proceedings of a court.

The proposed substitute carefully guards the rights of the accused and gives ample opportunity to present to the court written evidence purging himself of the alleged contempt.

The Senate bill, while granting a jury trial in all cases of alleged "indirect contempts" (those not committed in the presence of the court or judge at chambers), failed to point out a procedure and seemingly left the trial for a future day and possibly in another court. No provision was made for obtaining a jury in case no jury was present, and hence great and serious delays might occur.

Your committee think it wise that when a jury trial is demanded specific power shall be vested in the court to speedily obtain a jury and proceed to the trial of the alleged contempt. No injustice can be done the accused. Preliminary proofs are required; process must issue and the alleged offender be brought before the court or judge; a written accusation must then be made and filed; an answer is permitted, and a day is then fixed for the hearing. When the jury is obtained the trial is to proceed as in a criminal case and upon evidence produced as in criminal cases, and the accused must be confronted with the witnesses against him. The manner of selecting the jury is pointed out and peremptory challenges provided for.

These provisions, necessary for the reason that the proceeding is new, can not result in injustice to the accused, for he is provided with every safeguard the law throws around alleged offenders against the criminal law.

The provision of the substitute, which says that interrogatories embracing the questions of fact material to the inquiry shall be framed by the presiding judge and submitted to the jury, to be by it answered in writing, while provoking some criticism, is, in our judgment, wise and necessary.

When the evidence has been presented to the court and jury the question of contempt or no contempt will rest on the decision of the jury as to whether the accused has or has not done certain acts. It is not for the jury to say whether the order or decree of the court alleged to have been offended against is wise or unwise, lawful or unlawful. It is not for the jury to say whether the act done is forbidden by the order or decree. The court is to construe and interpret its own order, and if the act found by the jury to have been done (or omitted when

the order requires the doing of an affimative act) has been done or omitted, contrary to the provisions of the order, decree, or judgment of the court or judge, and under conditions and circumstances showing contumacious conduct, the court or judge should be permitted to determine the effect of the act or conduct complained of.

The whole bill is restrictive upon the courts and judges, and in our judgment it would be unwise to impose on the jury the task of determining the single question "guilty or not guilty" of violating the order or decree of the court. The construction of a statute is always for the court, and not the jury. The construction of an unambiguous writing is always a question of law for the court, and not a question of fact for the jury. So the court making the order or decree should be permitted to construe it; the appellate courts will reverse or modify it if wrong, but while it stands as the order of the court a jury should only be called on to determine the question whether certain acts commanded or forbidden have or have not been done.

The passing of the determination of this question over to the jury is quite as far as we ought to go if we would maintain the character and dignity of our courts. When we have done this we have gone quite as far as just-minded men will ask us to go. The facts are for the jury, the law for the courts to decide. No jury cares to be burdened with questions of law, and the accused is safe only when the determination of legal propositions is left to the decision of the proper tribunal. If we go further we tread upon dangerous ground and may undermine our courts, the only true bulwarks of our liberties.

The proposed substitute has been presented to and approved by a representative of five of the principal labor organizations of the country. The language is carefully guarded and in express terms provides that the presiding judge shall pronounce judgment according to law and in accordance with the findings of the jury. The jury is made the sole arbiter of every question of fact. These findings can not be disregarded or set aside by the court. No man can be pronounced guilty except on the finding of a jury.

The bill further provides for preserving the testimony and for an appeal in all cases of indirect contempts. This is in the interest of the liberty of the citizen, and while we should be careful not to open the door to petty appeals made for delay, we should give every reasonable opportunity for the correction of errors when personal liberty is involved.

Your committee, having carefully examined the whole question, favorably report the accompanying substitute for Senate bill 2984, and recommend that the whole of Senate bill 2984 after the enacting clause be stricken out and the following inserted in lieu thereof, to wit:

That contempts of court are divided into two classes, direct and indirect, and shall be proceeded against only as hereinafter prescribed.

SEC. 2. That contempts committed during the sitting of the court or of a judge at chambers, in its or his presence or so near thereto as to obstruct the administration of justice, or by neglecting or refusing to obey the mandate of any lawful subpœna to attend any court or before a judge or commissioner and testify as a witness or produce books, documents, or records, or by neglecting or refusing to obey the mandates of a lawful summons or subpœna to attend and serve as a juror in any court or authorized proceeding, are direct contempts. All other are indirect contempts.

SEC. 3. That a direct contempt may be punished summarily without written accusation against the person arrainged, but if the court or judge at chambers shall adjudge him guilty thereof a judgment shall be entered of record in which shall be specified the conduct constituting such contempt, with a statement of whatever defense or extenuation the accused offered thereto and the sentence of the court thereon; but when the alleged contempt consists in neglecting or refusing to obey the mandates of a subpœna or summons to attend as a witness and give evidence or produce books, papers, or documents, or to attend as a juror, due proof of the lawful

service of such subpœna or summons shall first be filed and the contumacious witness or juror allowed to file written proofs by affidavit denying such service or giving excuses for the neglect or failure to obey such mandates, and thereupon the court may proceed to a hearing of the alleged contempt.

SEC. 4. That upon the return of an officer on process or an affidavit duly filed, showing any person guilty of indirect contempt, a writ of attachment or other lawful process may issue and such person be arrested and brought before the court or judge at chambers; and thereupon a written accusation setting forth succinctly and clearly the facts alleged to constitute such contempt shall be filed and the accused required to answer the same, by an order which shall fix the time therefor, and also the time and place for hearing the matter; and the court or judge at chambers may, on proper showing, extend the time so as to give the accused a reasonable opportunity to purge himself of such contempt. After the answer of the accused, or if he refuse or fail to answer, the court or judge at chambers may proceed at the time so fixed to hear and determine such accusation upon such testimony as shall be produced. If the accused answer, the trial shall proceed upon testimony produced as in criminal cases, and the accused shall be entitled to be confronted with the witnesses against him; but if a trial by jury is not demanded, such trial shall be by the court without the intervention of a jury if the alleged contempt consists in the violation of an order or process of the court, or by a judge at chambers in case the alleged contempt consists in the violation of an order or lawful process granted by a judge at chambers, and upon application of the accused, a trial by jury shall be had as in any criminal case. In case an application is made for a trial by jury and the alleged offender is entitled thereto under the provisions of this act, the court or judge may impanel a jury for the trial of the question from the jurors then in attendance, or send the case to a term of the court for trial at a future day, or if no jury is in attendance the court or judge at chambers, as the case may be, may cause a sufficient number of jurors to be selected and summoned as provided by law to attend at the time and place fixed for the trial of such alleged contempt, from which panel of jurors a jury for the trial of the case shall be selected in the manner jurors are selected for the trial of misdemeanors, and the plaintiff and defendant in the proceeding shall each be entitled to three peremptory challenges, and the trial shall then proceed as in case of misdemeanor: *Provided, however,* That in each case interrogatories shall be framed by the judge presiding at the trial, which shall embrace the questions of fact material to the inquiry, and be submitted to the jury, to be by it answered in writing, and to each interrogatory the jury shall separately answer in writing, over their signatures, and in case the jury shall answer any interrogatory in the affirmative the fact therein brought in question shall be deemed established. On the findings of the jury in answer to such interrogatories the court or judge shall proceed to pronounce judgment in accordance therewith according to law. If the accused be adjuged guilty judgment shall be entered accordingly, prescribing the punishment.

SEC. 5. That the testimony taken on the trial of any accusation of indirect contempt may be preserved by bill of exceptions, and any judgment of conviction therefor may be reviewed upon direct appeal to or by writ of error from the Supreme Court, and affirmed, reversed, or modified as justice may require. Upon allowance of an appeal or writ of error execution of the judgment shall be stayed upon the giving of such bond as may be required by the court or a judge thereof, or by any justice of the Supreme Court.

SEC. 6. That the provisions of this act shall apply to all proceedings for contempt in all courts of the United States except the Supreme Court; but this act shall not affect any proceedings for contempt pending at the time of the passage thereof.

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54TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REP'T 2471, Part 2.

CONTEMPTS OF COURTS.

JANUARY 11, 1897.—Referred to the House Calendar and ordered to be printed.

Mr. DE ARMOND, from the Committee on the Judiciary, submitted the following as the

VIEWS OF THE MINORITY.

[To accompany S. 2984.]

The undersigned members of the Committee on the Judiciary, being unable to agree with the committee in its action upon the bill (S. 2984) entitled "An act in relation to contempts of courts," wish to state briefly some of the reasons for our dissent.

It is evident that legislation concerning contempts of courts is suggested by a belief that the existing law or practice upon the subject is such that there is need of improvement. What, then, is the supposed defect?

Are the Federal tribunals wanting in power to punish for contempts of court? Or is legislation demanded or desirable to correct abuse in the exercise by some of these tribunals of ample powers already possessed by them?

There is but one answer—neither reason nor excuse for legislation "in relation to contempts of courts" can be found, except upon the theory of an abuse by some of the courts of the power which all of them have in large measure to punish summarily such contempts.

Then there should be no legislation at all upon this subject, or there should be legislation to circumscribe the powers or reform the practice of the courts and strengthen the safeguards of the citizen.

Viewed thus, we believe the amendment, by way of substitute, proposed by the committee should be rejected, and the Senate bill should be passed.

The committee have included in the classification of what are called "direct contempts" failure or refusal to obey a subpœna for witnesses or a summons for jurors. If such failure or refusal amounts to a "direct" contempt, it is not easy to perceive how or why a failure or refusal to obey any other lawful command of a court, whether affirmative or negative, is an indirect and not a direct contempt of court.

But it is urged that a contempt committed in failing or refusing to obey a subpœna for witnesses or a summons for jurors should be punished summarily, as direct contempts are punished. Direct contempts, according to the Senate bill, are "contempts committed during the sitting of the court or of a judge at chambers, in its or his presence or so near thereto as to obstruct the administration of justice."

About this definition is a degree of accuracy which must commend it to the favorable consideration of lawyers, while the committee's enlargement of this definition into that which they offer as constituting direct

contempts may, perhaps, be regarded by legal lexicographers as a novelty.

It is submitted that such contempts as lie in disregard of a subpœna or summons may, and in practice would, be dealt with summarily under the Senate bill if it were law. For instance, there would be no trial if the person charged with being guilty of such a contempt should admit that he neglected or refused to render obedience to the command of the subpœna or summons. In such case the "written accusation" mentioned in the Senate bill and in the committee substitute could be confined within the limits of a single short sentence. There would never be a trial upon a plea of guilty. Besides, a few words inserted in the Senate bill, by way of amendment, would directly, in terms, provide for the summary punishment of such indirect contempts as direct contempts, properly so called, may be punished.

The object of the Senate bill is to afford persons charged with indirect contempts a trial by jury, as in criminal cases. The effect of the committee substitute, if enacted into law, would be to give the accused the form of a jury trial, with the substance withdrawn. For, instead of accepting the plan of the real jury trial, as embodied in the Senate bill, the committee provide for the submission to the jury of interrogatories, prepared by the court, and to be answered by the jury in writing. Upon the answers the court will determine the guilt or innocence of the accused. About the question of guilt or innocence the jury, according to the committee, shall have nothing to say. That shall be determined by the court, which is to continue to be not only judge and jury, but accuser as well.

Believing that the citizen should be better protected in his rights in proceedings for alleged contempts of court, and believing also that additional protection for him is to be found in real and not mock jury trials, we oppose the recommendation of the committee, and favor the passage of the Senate bill. For while that bill might be improved by amendment in furtherance of its object and not against it, we are of opinion that unless the House pass the Senate bill as it is there will be no legislation upon the subject by the present Congress.

If, however, the committee substitute is to be passed instead of the Senate bill, there should surely be taken out of it the provision for interrogatories to the jury and special findings by the jury, and it should be clearly provided that the verdict of the jury shall be "guilty" or "not guilty;" nothing more, nothing less.

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